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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOLLYNN DELIL

Plaintiff,

v.

EASTOPEN, INC; and DOES 1-
25, Inclusive,

Defendants.

CASE NO.
Civil Rights

C11-02929

COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AND DAMAGES; DENIAL
OF CIVIL RIGHTS AND PUBLIC
FACILITIES TO PHYSICALLY
DISABLED PERSONS, (§§ 51,
52, 54.1, 55 CIVIL CODE;
1995 ff HEALTH & SAFETY
CODE); INJUNCTIVE RELIEF PER
TITLE III, AMERICANS WITH
DISABILITIES ACT OF 1990, 42 USC
§12181. et. seq.

DEMAND FOR JURY TRIAL

ADR

FILED

JUN 15 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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ISS

1 Plaintiff Hollynn Delil complains of Defendants above named, and each of
2 them, and alleges as follows:

3 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF**
4 **FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC**
5 **ACCOMMODATION**
6 **(§§19955 Et. Seq., Health & Safety Code, §§ 51 Et. Seq.**
7 **and 54, Et. Seq. Civil Code)**

8 1. Ms. Delil is a “person with a disability” or “physically handicapped
9 person.” Ms. Delil requires the use of a wheelchair for locomotion and is unable
10 to use portions of public facilities which are not accessible to disabled persons who
11 require the use of a wheelchair.

12 2. **SUMMARY:** This case involves the denial of disabled accessible
13 parking, paths of travel, entrances, restaurant, counters, seating, public restrooms,
14 guest rooms, signage, and related facilities to Ms. Delil and other disabled persons
15 at the Whitcomb Hotel and adjacent parking lot (the “Hotel”) at 1231 Market Street,
16 San Francisco, California 94103. Ms. Delil was denied equal protection of the law
17 and was denied Civil Rights under both California law and federal law. Ms. Delil
18 was denied her rights to full and equal access at the Hotel because it was not, and is
19 not, properly accessible to disabled persons such as Ms. Delil who use wheelchairs.
20 Ms. Delil seeks injunctive relief to require that Defendants make the Hotel
21 accessible to disabled persons and to ensure that any disabled person who use the
22 Hotel will be provided accessible parking, paths of travel, entrances, restaurant,
23 counters, seating, public restrooms, guest rooms, signage, and related facilities.
24 Ms. Delil also seeks recovery of damages for her injuries and discriminatory
25 experiences and reasonable attorneys' fees, expenses, and costs.

26 3. **JURISDICTION:** This Court has jurisdiction of this action pursuant
27 to 28 USC §1331 for violations of the Americans with Disabilities Act of 1990, 42
28 USC 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of
action arising from the same facts are also brought under California law, including

1 but not limited to violations of California Government Code §4450, *et. seq.*, Health
2 & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code of
3 Regulations; and California Civil Code §§ 51, §52, 52.1 54, 54.1 and 55.

4 4. **VENUE:** Venue is proper in this court pursuant to 28 USC 1391(b)
5 and is founded on the fact that the real property which is the subject of this action is
6 located in this district and that Ms. Delil's causes of action arose in this district.

7 5. **INTRADISTRICT:** This case should be assigned to the San Francisco
8 intradistrict as the real property which is the subject of this action is located in said
9 intradistrict and Ms. Delil's causes of action arose in said intradistrict.

10 6. Defendants and DOES 1-10, Inclusive, are the owners, operators,
11 lessors, lessees, franchisors and/or franchisees of the subject Hotel, property, and
12 facilities which are the subject of this action. The Hotel, property, and facilities are
13 "public accommodations or facilities" subject to the requirements of California
14 Health & Safety Code §19955 *et seq.* and the California Civil Code's Unruh Act and
15 Disabled Person's Act. On information and belief, the Hotel, property, and facilities
16 have, since July 1, 1970, either been constructed and/or undergone "alterations,
17 structural repairs, or additions" subjecting them to disabled access requirements per
18 §19959 Health & Safety Code.

19 7. The true names and capacities of Defendants DOES 11 through 25,
20 Inclusive, are unknown to Ms. Delil who therefore sues said Defendants by such
21 fictitious names; Ms. Delil is informed and believes that each of the Defendants
22 herein designated as a DOE is legally responsible in some manner for the events and
23 happenings herein referred to and the proximate cause of injury and damages to Ms.
24 Delil. Ms. Delil prays leave of Court to amend this Complaint to show such true
25 names and capacities when the same have been ascertained.

26 8. Defendants and DOES 1-25, Inclusive, are and/or were the owners,
27 operators, lessors, lessees, franchisors and/or franchisees of the subject Hotel,
28 property, and facility during all times relevant to this Complaint. Ms. Delil is

1 informed and believes that each of the Defendants herein is the agent, employee or
2 representative of each of the other Defendants, and performed all acts and omissions
3 stated herein within the scope of such agency or employment or representative
4 capacity and is responsible in some manner for the acts and omissions of the other
5 Defendants in proximately causing the damages complained of herein.

6 9. Ms. Delil and other similarly situated physically disabled persons who
7 require the use of a wheelchair are unable to use public facilities on a "full and
8 equal" basis unless each such facility is in compliance with the provisions of Health
9 & Safety Code §19955 et. seq. Ms. Delil is a member of that portion of the public
10 whose rights are protected by the provisions of §19955 et seq. Health & Safety Code.
11 The acts and omissions of Defendants complained of herein were committed in the
12 City and County of San Francisco, State of California.

13 10. §19955 Health & Safety Code was enacted "To ensure that public
14 accommodations or facilities constructed in this state with private funds adhere to
15 the provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the
16 Government Code." Such public accommodations are defined to include Hotels.
17 Title 24, California Code of Regulations, formerly known as the California
18 Administrative Code, was in effect at the time of new construction and/or each
19 alteration which, on information and belief, occurred at such public facility since
20 July 1, 1982, thus requiring access complying with the specifications of Title
21 24 whenever there is such new construction or whenever each such "alteration,
22 structural repair or addition" is carried out. On information and belief, the original
23 construction of the building and/or subsequent alterations, structural repairs, or
24 additions which triggered access requirements also may have occurred between July
25 1, 1970 and July 1, 1982, and required access pursuant to the A.S.A. (American
26 Standards Association) Regulations then in effect.

27 11. Within the past two (2) years, most recently on August 25, 2010, Ms.
28 Delil has encountered barriers to access at, and been denied full and equal access

1 to, the public parking lot adjacent to the Hotel, the path of travel from the Hotel
 2 covered parking lot to the rear entrance to the Hotel, the lift to the rear entrance to
 3 the Hotel, the registration counter in the Hotel, the Hotel restaurant, and the Hotel
 4 guest rooms, and has suffered discrimination and denial of her civil rights as a
 5 result. As set forth more fully below, Ms. Delil has encountered numerous barriers
 6 to access which discriminated against her and which has caused her difficulty:

7 A. PUBLIC PARKING LOT

8 While in San Francisco during the summer of 2010 to attend a
 9 performance at the nearby Orpheum theater, Ms. Delil found that the public parking
 10 lot owned by defendant on the right hand side of Stevenson off 8th Street lacked
 11 accessible parking for her wheelchair accessible van and, because she could not park
 12 there, discriminated against her because of her disability and need for a wheelchair
 13 for mobility.

14 On August 25, 2010, Ms. Delil arrived at the Hotel in her wheelchair
 15 accessible van for an overnight stay and proceeded in her van on 8th Street to
 16 Stevenson, where she turned right to park in the Hotel covered parking lot on the left
 17 hand side of Stevenson, for guests staying at the Hotel. Ms. Delil observed that the
 18 public parking lot owned by the owner of the Hotel on the right hand side of
 19 Stevenson still lacked accessible parking for her wheelchair accessible van and
 20 therefore continued to discriminate against her because of her disability and need for
 21 a wheelchair for mobility.

22 B. PATH OF TRAVEL FROM COVERED PARKING
 23 LOT TO THE REAR ENTRANCE TO THE HOTEL
 AND LIFT AT THE REAR ENTRANCE

24 After parking in the Hotel's covered parking lot, Ms. Delil proceeded
 25 in her wheelchair and with her luggage to the rear entrance to the Hotel on an
 26 uneven path of travel and arrived at an area in the rear of the Hotel where she
 27 encountered a steep ramp with a slope in excess of that required by federal and state
 28 disabled access laws and regulations at the base of an "accessible" lift to gain entry

1 into the Hotel which caused her difficulty in ascending in her wheelchair and which
2 discriminated against her because of her disability and need for a wheelchair for
3 mobility. In addition, because the lift is not independently operable as required by
4 federal and state disabled access laws and regulations, Ms. Delil was required to
5 contact Hotel staff to come to the rear of the Hotel, to wait for Hotel staff arrival, and
6 to depend on staff assistance to unlock and operate the lift so that she could enter the
7 Hotel, all of which discriminated against her because of her disability and need for
8 a wheelchair for mobility.

9 D. LOBBY REGISTRATION COUNTER

10 After finally gaining entrance to the Hotel, Ms. Delil proceeded to the
11 registration counter, which did not have a lowered section as required by federal and
12 state disabled access laws and regulations for persons such as herself who use
13 wheelchairs, which caused her some difficulty, and which discriminated against her
14 because of her disability and need for a wheelchair for mobility.

15 E. GUESTROOM

16 Although Ms. Delil found that the room to which she was assigned was
17 generally accessible, she nevertheless understands the guestroom has a security
18 chain at the door which is too high, a desk that does not have required knee
19 clearance, drapery controls that required grasping and twisting to operate, and a floor
20 drain in the roll in shower with excessive adjacent slopes .

21 F. RESTAURANT

22 Ms. Delil encountered tables in the Hotel restaurant which lacked the
23 knee clearance underneath required by federal and state disabled access laws and
24 regulations for persons such as herself who use wheelchairs This lack of knee
25 clearance space forced Ms. Delil to sit at an angle to the table, caused
26 her some discomfort while dining at the table, and discriminated against her because
27 of her disability and need for a wheelchair for mobility.

28 12. On September 6, 2011 and for many months thereafter Ms. Delil

1 communicated with Hotel personnel by letter and e mail in an unsuccessful effort to
2 persuade defendant voluntarily to bring the public parking, path of travel, lift,
3 counter, and hotel guestrooms into compliance with federal and state disabled
4 access laws and regulations.

5 13. In addition to the barriers to access that Ms. Delil personally
6 encountered or observed as set forth in paragraph 11, infra, Ms. Delil is informed
7 and believes and thereon alleges that the Hotel, property and related facilities have
8 other barriers to access that do not comply with federal and state disabled access
9 laws and regulations, including but not necessarily limited to the concierge counter,
10 public restrooms, guestrooms in the Hotel other than the guestroom in which she
11 stayed, and signage.

12 14. Ms. Delil has standing to require that Defendants remove all mobility
13 barriers to access at the Hotel, property, and facilities and bring them into
14 compliance with federal and state disabled access laws and regulations. The Court
15 should require that Defendants bring the Hotel, property, and related facilities into
16 compliance with all applicable federal and state disabled access laws and
17 regulations.

18 15. Further, any violation of the Americans With Disabilities Act of 1990,
19 (as pled in the Second Cause of Action), the contents of which are repled and
20 incorporated herein), also constitutes a violation of California Civil Code's Unruh
21 Act and Disabled Person's Act, thus independently justifying an award of damages
22 and injunctive relief pursuant to California law.

23 16. **INJUNCTIVE RELIEF:** Ms. Delil seeks injunctive relief to prohibit
24 the acts and omissions of Defendants as complained of herein which are continuing
25 on a day-to-day basis and have the effect of wrongfully excluding Ms. Delil and
26 other members of the public who are physically disabled wheelchair users from full
27 and equal access to the Hotel, property, and their facilities. Such acts and omissions
28 are the cause of humiliation and mental and emotional suffering of Ms. Delil in that

1 these actions continue to treat Ms. Delil as an inferior and second class citizen and
2 discriminates against her on the sole basis that she is a person with disabilities and
3 requires the use of a wheelchair for movement in public places; Ms. Delil is unable,
4 so long as such acts and omissions of Defendants continue, to achieve equal access
5 to and use of this Hotel, property, and and their facilities. Until Defendants make the
6 Hotel, property, and their facilities accessible to and useable by Ms. Delil, she is
7 deterred from returning to the Hotel, property, and their facilities. Ms. Delil wishes
8 to return to the Hotel, property , and facilities as soon as they are accessible to her
9 in compliance with federal and state laws and regulations. The acts of Defendants
10 have proximately caused and will continue to cause irreparable injury to Ms. Delil
11 if not enjoined by this court.

12 **17. DAMAGES:** As a result of the denial of equal access to the Hotel,
13 property, and their facilities, and due to the acts and omissions of Defendants and
14 each of them in owning, operating, leasing, franchising, constructing, altering, and
15 maintaining the Hotel, property, and facilities, Ms. Delil suffered a violation of her
16 Civil Rights including but not limited to rights under Civil Code's Unruh Act and
17 Disabled Person's Act, and suffered physical injury, discomfort and pain, mental
18 and emotional distress, embarrassment and humiliation, all to her damages as
19 hereinafter stated. Defendants' actions and omissions constituted discrimination
20 against Ms. Delil on the sole basis that she is physically disabled and unable,
21 because of the architectural barriers created and/or maintained by the Defendants in
22 violation of the subject laws, to use the Hotel, property, and their facilities on a full
23 and equal basis as other persons. Ms. Delil also seeks trebling of all actual damages,
24 general and special, as provided by said Civil Code §54.3.

25 **18. FEES AND COSTS:** As a result of Defendants' acts, omissions, and
26 conduct, Ms. Delil has been required to incur attorneys' fees, litigation expenses,
27 and costs as provided by statute, in order to enforce Ms. Delil's rights and to enforce
28 provisions of the law protecting access for disabled persons and prohibiting

1 discrimination against disabled persons. Ms. Delil therefore seeks recovery of all
 2 reasonable attorney's fees and costs, pursuant to the provisions of the federal
 3 Americans With Disabilities Act and California Civil Code Statutes. Additionally,
 4 Ms. Delil's lawsuit is intended not only to obtain compensation for damages to Ms.
 5 Delil, but also to force the Defendants to make their facilities accessible to all
 6 disabled members of the public, justifying "public interest" attorneys' fees, litigation
 7 expenses and costs pursuant to the provisions of §1021.5 Code of Civil Procedure.

8 19. Ms. Delil asks this court to preliminarily and permanently enjoin any
 9 continuing refusal by Defendants to grant access to Ms. Delil and to require
 10 Defendants to comply with the applicable statutory and regulatory requirements
 11 relating to access for disabled persons. Such injunctive relief is provided by §19953
 12 Health & Safety Code and California Civil Code's Unruh Act and Disabled Person's
 13 Act, and other law. Ms. Delil further requests that the court award damages
 14 pursuant to California Civil Code's Unruh Act and Disabled Person's Act and other
 15 law and statutory costs and attorney fees pursuant to §19953 Health & Safety Code,
 16 the Unruh Act, the Disabled Person's Act, Code of Civil Procedure §1021.5, and
 17 other law, all as hereinafter prayed for.

18 Wherefore Ms. Delil prays for relief as hereinafter stated:

19 **SECOND CAUSE OF ACTION:**
 20 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
 21 **42 USC §12101FF**

22 20. Ms. Delil repleads and incorporates by reference, as if fully set forth
 23 again herein, the allegations contained in Paragraphs 1 through 19 of this
 24 Complaint, and incorporates them herein as if separately repled.

25 21. Pursuant to law, in 1990 the United States Congress made findings per
 26 42 USC §12101 regarding physically disabled persons, finding that laws were
 27 needed to more fully protect "some 43 million Americans [with] one or more
 28 physical or mental disabilities;" that "historically society has tended to isolate and
 segregate individuals with disabilities;" that "such forms of discrimination against

1 individuals with disabilities continue to be a serious and pervasive social problem;"

2 that "the Nation's proper goals regarding individuals with disabilities are to assure

3 equality of opportunity, full participation, independent living and economic self

4 sufficiency for such individuals;" and that "the continuing existence of unfair and

5 unnecessary discrimination and prejudice denies people with disabilities the

6 opportunity to compete on an equal basis and to pursue those opportunities for which

7 our free society is justifiably famous. . . ."

8 22. Congress stated the following as its purpose in passing the Americans

9 with Disabilities Act (42 USC §12101(b)):

10 It is the purpose of this act

11 (1) to provide a clear and comprehensive national mandate for the

12 elimination of discrimination against individuals with disabilities;

13 (2) to provide clear, strong, consistent, enforceable standards addressing

14 discrimination against individuals with disabilities;

15 (3) to ensure that the Federal government plays a central role in enforcing the

16 standards established in this act on behalf of individuals with disabilities; and

17 (4) to invoke the sweep of Congressional authority, including the power to

18 enforce the 14th Amendment and to regulate commerce, in order to address

19 the major areas of discrimination faced day to day by people with disabilities.

20 (Emphasis added)

21 23. As part of the Americans with Disabilities Act, Public Law 101-336,

22 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and

23 Services Operated by Private Entities" (42 USC 12181ff). Among "private entities"

24 which are considered "public accommodations" for purposes of this title are a Hotel,

25 or other establishment serving food or drink. (§301(7)(B) and "...a Hotel, motel or

26 other place of lodging." (301 (7) (A).

27 24. Pursuant to §302, 42 USC §12182, "No individual shall be

28 discriminated against on the basis of disability in the full and equal enjoyment of the

goods, services, facilities, privileges, advantages, or accommodations of any place

of public accommodation by any person who owns, leases, or leases to, or operates

a place of public accommodation."

1 25. Among the specific prohibitions against discrimination were included:
2 §302(b)(2)(A)(ii): "A failure to make reasonable modifications in policies, practices
3 or procedures when such modifications are necessary to afford such goods, services,
4 facilities, privileges, advantages or accommodations to individuals with
5 disabilities...;"

6 §302(b)(A)(iii): "a failure to take such steps as may be necessary to ensure that no
7 individual with a disability is excluded, denied service, segregated, or otherwise
8 treated differently than other individuals because of the absence of auxiliary aids and
9 services....;"

10 §302(b)(2)(A)(iv): "A failure to remove architectural barriers, and communication
11 barriers that are structural in nature, in existing facilities... where such removal is
12 readily achievable;"

13 §302(b)(2)(A)(v): "Where an entity can demonstrate that the removal of a barrier
14 under clause (iv) is not readily achievable, a failure to make such goods, services,
15 facilities, privileges, advantages, or accommodations available through alternative
16 methods if such methods are readily achievable." The acts and omissions of
17 Defendants set forth herein were in violation of Ms. Delil's rights under the ADA,
18 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36ff.

19 26. The removal of each of the barriers complained of by Ms. Delil were
20 at all times mentioned "readily achievable" under the standards of the Americans
21 With Disabilities Act. As noted hereinabove, removal of each and every one of the
22 architectural barriers complained of herein were also required under California law.
23 On information and belief, access in certain particulars were also required by either
24 new construction and /or alterations and additions to the premises occurring after
25 January 26, 1993, pursuant to section 303 of the ADA (42 USC 12183).

26 27. As of the dates of Ms. Delil's stay at the Hotel, and as of the date of the
27 filing of this Complaint, the premises denied full and equal access to Ms. Delil and
28 to other disabled wheelchair users, violated Ms. Delil's rights to full and equal

1 access, and discriminated against Ms. Delil on the basis of her disability, thus
 2 wrongfully denying to Ms. Delil the full and equal enjoyment of the goods, services,
 3 facilities, privileges, advantages and accommodations, in violation of §302 of the
 4 ADA, 42 USC §12182. Said premises continue on a day to day basis to deny Ms.
 5 Delil and other disabled persons such full and equal access.

6 28. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, §308,
 7 Ms. Delil is entitled to the remedies and procedures set forth in §204(a) of the Civil
 8 Rights Act of 1964, 42 USC 2000(a)-3(a), as Ms. Delil is being subjected to
 9 discrimination on the basis of disability in violation of this title or has reasonable
 10 grounds for believing that she is about to be subjected to discrimination in violation
 11 of §302. On information and belief, Defendants have continued to violate the law
 12 and deny the rights of Ms. Delil and of other disabled persons to access this public
 13 accommodation since on or before Ms. Delil's visits. Pursuant to §308(a)(2), "In
 14 cases of violations of §302(b)(2)(A)(iv)... injunctive relief shall include an order to
 15 alter facilities to make such facilities readily accessible to and usable by individuals
 16 with disabilities to the extent required by this title."

17 29. Ms. Delil seeks relief pursuant to remedies set forth in §204(a) of the
 18 Civil Rights Act of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal
 19 Regulations adopted to implement the Americans with Disabilities Act of 1990. Ms.
 20 Delil is a person for purposes of Section 308(a) of the ADA who is being subjected
 21 to discrimination on the basis of disability in violation of Title III and who has
 22 reasonable grounds for believing she will be subjected to such discrimination each
 23 time that she may attempt to use the facilities.

24 Wherefore Ms. Delil prays for relief as hereinafter stated:

25 **PRAYER**

26 1. Issue a preliminary and permanent injunction directing Defendants as
 27 owners, operators, lessors and /or lessees ,and/or franchisors and /or franchisees of
 28 the subject Hotel, property and facilities to modify the above described Hotel,

1 property, and facilities so that each provides adequate access to all citizens,
2 including persons with disabilities; and issue a preliminary and permanent injunction
3 directing Defendants to provide facilities usable by Ms. Delil and similarly
4 situated persons with disabilities, and which provide full and equal access, as
5 required by law;

6 2. Retain jurisdiction over the Defendants until such time as the Court is
7 satisfied that Defendants' unlawful policies, practices, acts and omissions, and
8 maintenance of inaccessible public facilities as complained of herein no longer
9 occur, and will not recur;

10 3. Award to Ms. Delil all appropriate damages, including but not limited
11 to statutory damages, general damages and special damages in an amount within the
12 jurisdiction of the Court, and treble damages pursuant to the California Civil Code.

13 4. Award to Ms. Delil a reasonable attorneys' fees, litigation expenses,
14 and costs of this proceeding as provided by federal and state law; and

15 5. Grant such other and further relief as this Court may deem just and
16 proper.

17 Dated: 6/15/11

SIDNEY J. COHEN
PROFESSIONAL CORPORATION

18
19 By 

Sidney J. Cohen
Attorney for Plaintiff Hollynn Delil

20
21 DEMAND FOR JURY TRIAL

22 Ms. Delil hereby demands a jury for all claims for which a jury is
23 permitted.

24 Dated: 6/15/11

SIDNEY J. COHEN
PROFESSIONAL CORPORATION

25
26 By 

Sidney J. Cohen
Attorney for Plaintiff Hollynn Delil